It is urged that the statement in the finding as to it having been decreed that there was an undivided interest in William R. and Phebe A. Hearst, was adopted from a decree to that effect rendered by the Court of Private Land Claims, established under the act of March 3, 1891. (26 Stat. 854.) From this it is deduced that the recital in the patent as to the title in W. R. and Phebe A. Hearst was *res inter alios*, and that in the absence of an express and substantive finding of title in the parties named from the grantee of the Mexican Government the mere recital on the subject in the patent furnished no support whatever for the legal conclusion that there was title. This is based upon the terms of sections 8 and 13 of the act establishing the Court of Private Land Claims, wherein it was provided that the effect of a confirmation of a grant by that court should be only to quitclaim the title and not to affect the interests of third parties. But, conceding that the patent as asserted is based on a decree of the Court of Private Land Claims, and that its recitals are controlled by the terms of the act creating that tribunal, the proposition is without merit. (*Knight* v. *Land Association*, 142 U. S. 161, 188, 189.) In that case it was held that although a patent which had been issued in consequence of the report of a tribunal appointed by Congress, merely quitclaimed the rights of the United States and saved the rights of third parties, it nevertheless was conclusive as to the existence of a record title upon those claiming to hold under rights which originated subsequent to the cession, and, *a fortiori*, as to a person claiming title by mere possession. By the application of this doctrine it follows that the judgment confirming the land grant and the patent thereunder, which specifically decreed an interest in the confirmed grant to the parties named, was adequate to establish a record title as against persons asserting the character of rights upon which the defendants relied.

Second. It is further insisted that, in view of the finding of the court below as to possession of the defendant for more than ten years prior to the commencement of the action, the findings are inadequate to sustain the legal conclusion of the right of the plaintiff to recover, because of the force and effect of the period of limitation prescribed in paragraph 2938 of the Revised Statutes of Arizona for 1901. That paragraph is as follows:

"Any person who has a right of action for recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using and enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward."

The court below held, and its ruling on this subject is not questioned, that prior to the adoption of this revision of the Arizona statutes there was no statute of limitations in that Territory barring a right of action for the recovery of lands by one claiming title against another holding merely by

peaceable and adverse possession. The revision went into effect on September 1, 1901, and the present action was brought a few days prior to such date, viz., on August 26, 1901.

In approaching the question whether paragraph 2938 was applicable to the case, the court below assumed that the effect of the finding as to possession by defendants was to show peaceable and adverse possession by them for the period of ten years. The court, however, decided that under no canon of construction or rule giving a retroactive effect to a new statute of limitation could paragraph 2938 be made to apply to this case. Thus, suggesting the possible constructions which might be claimed for the paragraph, it was said that if construed as absolutely barring causes of action existing at the time of its passage, it was unconstitutional, citing *Sohn* v. *Waterson*, (17 Wall. 596.) Further, that even if the statute were construed as providing that all actions existing at the time of the passage of the statute should be barred if not sued upon within the time which elapsed between the date of such passage, and the date fixed for the going into effect thereof, this action was brought within such period and the statute could not operate as a bar, citing *Wrightman* v. *Boone County*, (82 Fed. Rep. 413) and various State decisions therein referred to. And, lastly, it was decided that if the paragraph was construed as not applying to a suit which, though commenced after the passage of the act, was pending at the time the same took effect, the statute had no application, citing *Vreeland* v. *Town of Bergen*, (34 N. J. Law, 438.)

We think the Supreme Court of the Territory was clearly right in the views which it thus expressed, and therefore it committed no error in determining that under no possible hypothesis could the limitation prescribed in paragraph 2938 of the Revised Statutes of Arizona operate to bar the plaintiff's action, in view of the findings of fact in respect to the title of plaintiff.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.